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 11 Counter-Claimants, and Third-Party Claimants: REGAL STONE
 12 LIMITED and FLEET MANAGEMENT LTD.

13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT CALIFORNIA**

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 vs.

18 M/V COSCO BUSAN, LR/IMO Ship. No.
 19 9231743 her engines, apparel, electronics,
 20 tackle, boats, appurtenances, etc., *in rem*,
 21 THE SHIPOWNERS' INSURANCE &
 22 GUARANTY COMPANY LTD., REGAL
 23 STONE, LTD., FLEET MANAGEMENT,
 24 LTD., and JOHN COTA, *in personam*,

25 Defendants.

26 UNITED STATES OF AMERICA,

27 Plaintiff,
 (FRCP 14(c))

28 vs.

STATE OF CALIFORNIA, and CHARLES
 CALZA, M.D.

Third-Party Defendant
 (FRCP 14(c))

) Case No. C 07 06045 (SC)

) IN ADMIRALTY

) **AMENDED THIRD PARTY**
) **COMPLAINT AGAINST STATE OF**
) **CALIFORNIA AND CHARLES**
) **CALZA, M.D., BY UNITED STATES**
) **OF AMERICA [FRCP 14(c)].**

RULE 14(c) CLAIM BY UNITED STATES
AGAINST STATE OF CALIFORNIA

Pursuant to Federal Rule of Civil Procedure 14(c), Regal Stone Limited ("Regal Stone") and Fleet Management Ltd. ("Fleet") demand judgment against the State of California (the "State") and Charles Calza, M.D., in favor of the United States of America, as if the United States had commenced an action directly against the State of California and Dr. Calza.

1. The United States is the Plaintiff in this action. It filed its First Amended Verified Complaint on March 26, 2008. A copy of Plaintiff's First Amended Verified Complaint is attached hereto as Exhibit "A."

2. Regal Stone and Fleet answered Plaintiffs First Amended Verified Complaint and counter claimed against the United States on June 5, 2008. A copy of Fleet and Regal Stone's Answer, Counter-Claim and Third-Party Complaint is attached hereto as Exhibit "B."

3. The United States' First Amended Verified Complaint alleges that this is a case of admiralty and maritime jurisdiction within Rule 9(h) of the Federal Rules of Civil Procedure.

4. The United States alleges it is authorized to bring suit, and that the Court has jurisdiction over its claims.

5. In its Complaint, the United States seeks response costs and damages from Regal Stone and Fleet, resulting from an oil spill from the COSCO BUSAN.

6. The United States alleges that the COSCO BUSAN, while piloted by Defendant John Cota, struck the San Francisco-Oakland Bay Bridge on November 7, 2007.

7. The United States alleges that as a result of this allision, oil spilled from the COSCO BUSAN, and the United States has incurred response costs and damages as a result of the oil spill.

8. The true facts and circumstances regarding the allision are that it was caused in whole or in part by the State's negligent and improper licensing and renewal of a marine pilot's license to Defendant John Cota, who was not medically fit or competent to pilot a vessel such as the COSCO BUSAN at the time of the allision. Dr. Calza was the State appointed physician who examined Defendant Cota and who certified that Cota was fit to perform the duties of a marine pilot. At all relevant times, Dr. Calza had the ability and duty to prevent Defendant Cota from renewing his license by advising the pilot commission that Cota was not fit for duty. Dr. Calza also had the ability and duty to warn defendant Cota that he was not medically fit to pilot commercial vessels, but failed to do so.

9. The State employed Dr. Calza in 2006 and 2007 to examine Pilot Cota in order to determine whether he was medically fit to perform his duties as a marine pilot. Dr. Calza acted as an agent of the State. In 2005, 2006 and 2007, Dr. Calza, and other physicians and mental health experts employed by the State, examined Defendant Cota and certified that he was fit to perform his pilotage duties.

10. The State's decision to renew Pilot Cota's license was negligent, or grossly negligent, given Pilot Cota's medical condition, history of prior accidents, and his history of addiction to alcohol and/or substances. The State's negligence, and the negligence of Dr. Calza and other physicians, for whom the State is vicariously liable, proximately caused the allision. The State and Dr. Calza are therefore wholly or partially liable to the United States for its damages.

COUNT I

NEGLIGENCE OF STATE

11. Regal Stone and Fleet incorporate and re-allege the allegations contained in paragraphs 1 to 10 by reference.

12. The State was negligent in renewing, or failing to revoke Pilot Cota's license before the Cosco Busan allided with the San Francisco-Oakland Bay Bridge.

COUNT III

MISREPRESENTATION

21. Fleet and Regal incorporate and re-allege the allegations contained in paragraphs 1 to 20 by reference.

22. The State is wholly or partially liable to the United States for the negligent, reckless or intentional misrepresentations made by State employees and agents in connection with the renewal of Pilot Cota's license.

23. Dr. Calza is wholly or partially liable to the United States for the negligent, reckless, or intentional misrepresentations made by Dr. Calza in connection with the renewal of Pilot Cota's license.

24. Said misrepresentations allowed Pilot Cota to retain his marine pilot's license, and were a proximate legal cause of the response costs and damages the United States is seeking in its lawsuit against Regal Stone and Fleet.

25. The State and Dr. Cota are wholly or partially liable to the United States for such damages.

COUNT IV

MANDATORY DUTY

26. Regal Stone and Fleet incorporate and re-allege the allegations contained in paragraphs 1 to 25 by reference.

27. The Board of Pilot Commissioners, as an agency of the State of California, is under a mandatory duty imposed by the California Harbors and Navigation Code §§ 1154 *et. seq.* to properly license, train, and supervise all San Francisco Bar Pilots.

28. The Board of Pilot Commissioners failed to discharge its duties as under California Government Code § 815.6 and improperly licensed, trained, and supervised Pilot Cota.

29. The State's breach of these mandatory duties was a proximate legal cause of the damages the United States is seeking in its lawsuit against Regal Stone and Fleet.

COUNT V

BREACH OF PUBLIC TRUST

30. Regal Stone and Fleet incorporate and re-allege the allegations contained in paragraphs 1 to 29 by reference.

31. The Board of Pilot Commissioners is required by California Harbors and Navigation Code §§ 1154 *et. seq* to properly train, license, and supervise San Francisco Bar Pilots to ensure the safety of public.

32. This requirement creates a public trust in the State of California to exercise its duties with due care and to avoid violating any duty or guaranty the State of California has made to the public.

33. The Board of Pilot Commissioners, by negligently training, supervising, and licensing Pilot Cota, failed in its obligation to exercise its duties with due care and breached its duty of guaranty and duty of warranty and as a result caused harm to the public's trust.

34. The United States has incurred, and will continue to incur costs, damages, losses and penalties caused directly and proximately by the State's breach of trust. The State is liable to the United States for its damages resulting from this breach of the public trust.

COUNT VI

CREATION OF DANGEROUS CONDITION

35. Third-Party Plaintiffs incorporate and re-allege the allegations contained in paragraphs 1 to 34 by reference.

36. The State of California knowingly and unreasonably created a dangerous condition under California Government Code § 835 by its acts and omissions related to the improper licensing, training, and supervision of Pilot Cota.

37. The San Francisco Bay is a public property owned and controlled by the State of California.

38. Pilot Cota was incompetent and unfit to navigate the COSCO BUSAN. By issuing pilot Cota a license to pilot large vessels in foggy conditions through San Francisco Bay, the State of California created an unsafe condition in the San Francisco Bay.

39. The United States has incurred, and will continue to incur costs and damages, caused directly and proximately by the State's creation of a dangerous condition.

PRAYER FOR RELIEF

WHEREFORE, Regal Stone Limited and Fleet Management Ltd. pray for the following relief:

1. With respect to this Amended Rule 14(c) third-party complaint, that judgment be entered in favor of the United States on its claims and against the State of California and Dr. Calza;

2. For an award of costs and attorney's fees incurred in this matter;

and

3. For all other relief to which they may be entitled at law or in equity.

DATED: August __, 2008

/s/ Joe Walsh

JOHN D. GIFFIN

JOSEPH A. WALSH II

JOHN COX

NICOLE S. BUSSI

**Attorneys for REGAL STONE LIMITED
and FLEET MANAGEMENT LTD.**

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Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Civil No. C07-6045 SC
)	
Plaintiff,)	IN ADMIRALTY
)	
v.)	
)	
M/V COSCO BUSAN, LR/IMO Ship No.)	FIRST AMENDED
9231743, her engines, apparel, electronics, tackle,)	VERIFIED COMPLAINT OF
boats, appurtenances, etc., in rem, REGAL STONE)	<u>THE UNITED STATES</u>
LIMITED, FLEET MANAGEMENT LTD., and)	
JOHN COTA, in personam,)	
)	
Defendants.)	

1 Plaintiff, the United States of America, alleges upon information and belief as follows:

2 **NATURE OF THE ACTION**

3 1. This is a case of admiralty and maritime jurisdiction, as hereinafter more fully
4 appears, and within Rule 9(h) of the Federal Rules of Civil Procedure, and, further, is an action
5 brought, *inter alia*, under the National Marine Sanctuaries Act ("NMSA"), 16 U.S.C. §§ 1431, *et*
6 *seq.*, the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. §§ 2701, *et seq.*, and the Park System
7 Resource Protection Act ("PSRPA"), 16 U.S.C. § 19jj, *et seq.*, against Defendants M/V COSCO
8 BUSAN, *in rem*, and REGAL STONE LIMITED ("REGAL STONE"), FLEET MANAGEMENT
9 LTD. ("FLEET MANAGEMENT"), and JOHN COTA, ("COTA"), *in personam*.

10 2. The United States expressly reserves the right further to amend this First Amended
11 Complaint to, *inter alia*, add additional parties and assert additional claims against such additional
12 parties and the present Defendants herein.

13 **JURISDICTION AND VENUE**

14 3. The United States is authorized to bring this suit and the Court has jurisdiction
15 pursuant to, *inter alia*, 28 U.S.C. § 1345, 16 U.S.C. §§ 1437 and 1443, 33 U.S.C. §§ 1321 and 2717,
16 and 16 U.S.C. § 19jj-2.

17 4. Venue is properly in this Court pursuant to, *inter alia*, 28 U.S.C. § 1391 and 1395,
18 16 U.S.C. § 1443, 33 U.S.C. § 2717, and 16 U.S.C. § 19jj-2.

19 **DEFENDANTS**

20 5. At all times material herein, defendant M/V COSCO BUSAN, LR/IMO Ship No.
21 9231743, her engines, apparel, electronics, tackle, boats, appurtenances, *etc.*, *in rem* (hereafter the
22 "Vessel"), was flagged in Hong Kong is now or during the pendency of this action will be within the
23 navigable waters of this District and within the jurisdiction of this Court.

24 6. At all times material herein, defendant REGAL STONE, a foreign corporation or
25 entity, presently believed to be headquartered in Hong Kong, had a place of business and/or was
26 doing business within this district and within the jurisdiction of this Court, including, but not limited
27

1 to, through operation of the Vessel at the time of, and with respect to, the matters sued upon herein.

2 7. At all times material herein, REGAL STONE owned the Vessel.

3 8. At all times material herein, REGAL STONE operated the Vessel.

4 9. At all times material herein, REGAL STONE managed the Vessel.

5 10. At all times material herein, REGAL STONE chartered the Vessel.

6 11. At all times material herein, REGAL STONE controlled the Vessel.

7 12. At all times material herein, defendant FLEET MANAGEMENT, a foreign
8 corporation or entity, presently believed to be headquartered in the Hong Kong, had a place of
9 business and/or was doing business within this district and within the jurisdiction of this Court,
10 including, but not limited to, through operation of the Vessel at the time of, and with respect to, the
11 matters sued upon herein.

12 13. At all times material herein, FLEET MANAGEMENT owned the Vessel.

13 14. At all times material herein, FLEET MANAGEMENT operated the Vessel.

14 15. At all times material herein, FLEET MANAGEMENT managed the Vessel.

15 16. At all times material herein, FLEET MANAGEMENT chartered the Vessel.

16 17. At all times material herein, FLEET MANAGEMENT controlled the Vessel.

17 18. At all times material herein, defendant COTA was a resident of the State of
18 California and/or had a place of business and/or was doing business within this district and within
19 the jurisdiction of this Court.

20 19. At all times material herein, defendant COTA was a licensed maritime pilot and,
21 *inter alia*, was licensed to pilot vessels such as the M/V COSCO BUSAN on the waters of San
22 Francisco Bay.

23 **GENERAL ALLEGATIONS**

24 20. On the morning of November 7, 2007, defendant COTA boarded the Vessel at its
25 berth at the Port of Oakland, California, in preparation for piloting the Vessel outbound from
26 Oakland, through the waters of San Francisco Bay, across the bar outside the Golden Gate, and
27

1 thereafter to the pilot station offshore San Francisco, at which point COTA was to disembark the
2 Vessel and transfer to a pilot boat. The Vessel thereafter was to continue directly on its voyage to
3 a foreign port of call, believed to be South Korea.

4 21. On the morning of November 7, 2007, defendant COTA, the Vessel, and her crew
5 departed the Vessel's berth in Oakland and proceeded outbound through the waters of San Francisco
6 Bay.

7 22. At the time the foregoing voyage commenced, and at all relevant times herein,
8 defendant COTA was on the bridge of the Vessel and serving in the capacity as pilot of the Vessel.

9 23. At the time the foregoing voyage commenced, and at all relevant times herein,
10 the Vessel's Master and various crew of the Vessel were on the bridge of the Vessel.

11 24. At or about 0830 hours on November 7, 2007, while on navigable waters of the
12 United States, the Vessel allided with the base and/or fendering system of the "Delta Tower", one
13 of the support towers of the western span of the San Francisco-Oakland Bay Bridge (the "Bay
14 Bridge").

15 25. The foregoing allision with the Bay Bridge resulted, *inter alia*, in a rupture of the
16 Vessel's tanks, thereby allowing a portion of the Vessel's bunkers to be discharged into navigable
17 waters of the United States and onto adjoining shorelines, including, but not limited to, navigable
18 waters and adjoining shorelines of San Francisco Bay, including its appurtenant waters and
19 tributaries; the Pacific Ocean, including, but not limited to, the Gulf of the Farallones National
20 Marine Sanctuary and the Monterey Bay National Marine Sanctuary; and the navigable waters and
21 adjoining shorelines of units of the National Park System, including, but not limited to, the Golden
22 Gate National Recreation Area, Point Reyes National Seashore, San Francisco Maritime National
23 Historic Park, Rosie the Riveter/World War II Home Front National Historic Park, and other
24 resources subject to the protections of the PSRPA. The foregoing allision and subsequent discharge
25 of bunkers is hereafter referred to as the "COSCO BUSAN Incident".

26 26. As a direct and proximate result of the COSCO BUSAN Incident, the United States
27

1 has expended and/or sustained, *inter alia*, response costs and damages within the meaning of the
 2 NMSA, OPA, and PSRPA and, further, will continue to expend and/or sustain such response costs
 3 and damages.

4 27. The COSCO BUSAN Incident was proximately caused, *inter alia*, by the acts,
 5 omissions, strict liability, fault, negligence, and breach of federal safety and operating regulations
 6 by the *in rem* and *in personam* Defendants and, as applicable, their agents, servants, employees,
 7 crew, and others for whom Defendants were responsible, all within the privity and knowledge of the
 8 Defendants.

9 28. The amount of damages sustained as a result of the COSCO BUSAN Incident
 10 presently is not known and shall be established according to proof at the time of trial.

11 **AS AND FOR A FIRST CAUSE OF ACTION AGAINST**

12 **ALL DEFENDANTS**

13 **(NATIONAL MARINE SANCTUARIES ACT)**

14 29. Plaintiff, United States of America, refers to and incorporates by reference as though
 15 fully set forth herein each and every foregoing paragraph of this First Amended Complaint.

16 30. Pursuant to the NMSA, any person who destroys and/or causes the loss of and/or
 17 injures National Marine Sanctuaries and their resources are strictly liable for, *inter alia*, all damages,
 18 response costs, and interest thereon. 16 U.S.C. §§ 1436-37.

19 31. Pursuant to the NMSA, vessels used to destroy and/or cause the loss of and/or
 20 injure National Marine Sanctuaries and their resources are strictly liable *in rem* and are subject to
 21 a maritime lien for all response costs, damages, and/or disbursements specified in the NMSA. 16
 22 U.S.C. § 1437(d)(3).

23 32. Pursuant to the NMSA, vessels used to destroy and/or cause the loss of and/or
 24 injure National Marine Sanctuaries and their resources are subject to forfeiture to the United States.
 25 16 U.S.C. § 1437(e)(1).

26 33. As a direct and proximate result of the actions set forth in the United States'
 27

1 Complaint, Defendants are liable to the United States, without limitation, by virtue of the NMSA,
2 16 U.S.C. §§ 1437 and 1443, for all response costs and damages.

3 **AS AND FOR A SECOND CAUSE OF ACTION AGAINST**
4 **REGAL STONE, AND FLEET MANAGEMENT**
5 **(OIL POLLUTION ACT OF 1990)**

6 34. Plaintiff, United States of America, refers to and incorporates by reference as though
7 fully set forth herein each and every foregoing paragraph of this First Amended Complaint.

8 35. Defendant REGAL STONE, *inter alia*, is a "responsible party" within the meaning
9 of OPA.

10 36. Defendant FLEET MANAGEMENT, *inter alia*, is a "responsible party" within the
11 meaning of OPA.

12 37. Pursuant to OPA, 33 U.S.C. § 2706(b), the federal government designates officials
13 to act as trustees for natural resources.

14 38. "Natural resources," as that term is defined in OPA, 33 U.S.C. § 2701(20), held in
15 trust by Federal trustees, have been injured, destroyed, or lost as the result of the Defendants'
16 discharge of oil into navigable waters, within the meaning of 33 U.S.C. § 2702(b)(2).

17 39. Pursuant to OPA, 33 U.S.C. § 2702(a) and (b), each responsible party for a vessel
18 from which oil is discharged, or which poses the substantial threat of discharge, into or upon the
19 navigable waters or adjoining shorelines or the exclusive economic zone of the United States, is
20 strictly liable for all response costs, damages, and/or disbursements specified in the Act, including,
21 but not limited to, damages for injuries to natural resources.

22 40. Under the circumstances herein, Defendants REGAL STONE and FLEET
23 MANAGEMENT are liable to the United States of America, without limitation, for all the aforesaid
24 response costs, damages, and/or disbursements sustained by the United States of America as a result
25 of the COSCO BUSAN Incident.

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**AS AND FOR A THIRD CAUSE OF ACTION AGAINST
REGAL STONE, AND FLEET MANAGEMENT
(OIL POLLUTION ACT OF 1990)**

41. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of this First Amended Complaint.

42. Pursuant to OPA, 33 U.S.C. §§ 2712(f) and 2715, the National Pollution Funds Center ("Fund"), on behalf of the Oil Spill Liability Trust Fund, shall be subrogated to all rights, claims and causes of action of claimants to whom it has paid compensation.

43. As a result of the COSCO BUSAN Incident, the Fund may incur costs, damages and/or disbursements by reason of claims for removal costs and damages brought against it under OPA, 33 U.S.C. § 2713.

44. Pursuant to OPA, Defendants REGAL STONE and FLEET MANAGEMENT are liable to the United States of America, without limitation, for all such costs, damages, and/or disbursements which may be sustained by the Fund.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST
REGAL STONE AND FLEET MANAGEMENT
(OIL POLLUTION ACT OF 1990)**

45. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of this First Amended Complaint.

46. Pursuant to OPA, 33 U.S.C. § 2717(f)(2), the United States is entitled to, and hereby seeks, a declaratory judgment that is binding in any subsequent action or actions against Defendants REGAL STONE and FLEET MANAGEMENT that said Defendants are liable for removal costs and damages in any such subsequent action or actions.

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1 **AND AS FOR A FIFTH CAUSE OF ACTION AGAINST**
2 **ALL DEFENDANTS**

3 **(PARK SYSTEM RESOURCE PROTECTION ACT)**

4 47. Plaintiff, United States of America, refers to and incorporates by reference as though
5 fully set forth herein each and every foregoing paragraph of this First Amended Complaint.

6 48. Pursuant to the PSRPA, 16 U.S.C. § 19jj-1(a), any person who destroys, causes the
7 loss of, or injures any park system resource is strictly liable to the United States for response costs
8 and damages resulting from such destruction, loss, or injury.

9 49. Pursuant to the PSRPA, 16 U.S.C. § 19jj-1(b), any vessel used to destroy and/or
10 cause the loss of and/or injure any park system resource or any marine or aquatic park resource shall
11 be liable *in rem* to the United States for response costs and damages resulting from such destruction,
12 loss, or injury to the same extent as a person is liable under § 19jj-1(a). .

13 50. As a direct and proximate result of the COSCO BUSAN Incident, Defendants are
14 liable to the United States, without limitation, by virtue of the PSRPA for all response costs and
15 damages specified therein.

16 **AS AND FOR A SIXTH CAUSE OF ACTION**
17 **AGAINST REGAL STONE AND FLEET MANAGEMENT**

18 **(FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. § 1321(b)(7)).**

19 51. Plaintiff, United States of America, refers to and incorporates by reference as though
20 fully set forth herein each and every foregoing paragraph of this Complaint. .

21 52. Pursuant to 33 U.S.C § 1321(b)(7), REGAL STONE and FLEET MANAGEMENT
22 are subject to a judicially assessed civil penalty. .

23 53. Pursuant to 33 U.S.C § 1321(b)(7), REGAL STONE and FLEET MANAGEMENT
24 are liable to the United States for a judicially assessed civil penalty in an amount to be determined
25 at trial.

26 //

1 WHEREFORE, the United States of America prays as follows:

2 1. That United States of America be granted judgment against all Defendants pursuant
3 to the First Amended Verified Complaint of the United States herein;

4 2. That if Defendants REGAL STONE and FLEET MANAGEMENT cannot be found
5 within this District, then, pursuant to Supplemental Admiralty Rule B of the Federal Rules of Civil
6 Procedure, that all of any such absent Defendants' property of any description, whatsoever, including
7 other vessels or real property, located within this District be attached for up to the amounts sued for
8 herein, and condemned and sold to pay the amounts due plaintiff herein;

9 3. That actual notice of the commencement of this suit, in a manner approved by the
10 Court, be given to the custodian, master or other ranking officer of the Vessel, as may be applicable,
11 and to any person, firm or corporation which has recorded a notice of claim of any undischarged lien
12 upon the said Vessel;

13 4. That, pursuant to Rule C(3) of the Supplemental Rules for Certain Admiralty and
14 Maritime Claims this Honorable Court enter an order authorizing a warrant for the arrest of the
15 Vessel, her engines, tackle, appurtenances, etc.;

16 5. That a warrant issue for the arrest of the Vessel, her engines, tackle, appurtenances,
17 etc.;

18 6. That judgment of condemnation and sale be entered against the Vessel, her engines,
19 tackle, appurtenances, etc.;

20 7. That plaintiff United States of America be declared the holder of a valid preferred
21 maritime lien on the Vessel, *in rem*;

22 8. That the Vessel be sold and the proceeds of the Vessel be applied first to any
23 judgments, costs, and expenses of the United States with respect to the Verified Complaint of the
24 United States herein;

25 9. In the alternative, that the Vessel, as defined in the NMSA, 16 U.S.C. § 1437(e), be
26 forfeited to the United States;

10. For such other relief as the Court deems just and proper in the premises.

Dated: March 14, 2008.

JEFFREY S. BUCHOLTZ
Acting Assistant Attorney General

/s/ R. Michael Underhill
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Attorney In Charge, West Coast Office
Torts Branch, Civil Division
U.S. Department of Justice

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division

/s/ Bradley R. O'Brien
BRADLEY R. O'BRIEN
Environmental Enforcement Section

Attorneys for Plaintiff United States of America

VERIFICATION

R. Michael Underhill says:

I am one of the attorneys for plaintiff, United States of America, herein, and make this verification by authority for and on its behalf; I have read the foregoing First Amended Complaint, know the contents thereof, and from information officially furnished to me believe the same to be true.

I verify under penalty of perjury, in accordance with 28 U.S.C. §1746, that the foregoing is true and correct.

Dated: March 14, 2008.

/s/ R. Michael Underhill
R. MICHAEL UNDERHILL

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10 Attorneys for Defendants, Counterclaimants, and Cross-Claimants:
11 REGAL STONE, LTD. and FLEET MANAGEMENT, LTD.

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT CALIFORNIA

15 UNITED STATES OF AMERICA,
16
17 Plaintiff,

18 vs.

19 M/V COSCO BUSAN, LR/IMO Ship. No.
20 9231743 her engines, apparel, electronics,
21 tackle, boats, appurtenances, etc., *in rem*,
22 THE SHIPOWNERS' INSURANCE &
GUARANTY COMPANY LTD., REGAL
STONE, LTD., FLEET MANAGEMENT,
LTD., and JOHN COTA, *in personam*,
23
24 Defendants.

25 REGAL STONE, LTD., FLEET
26 MANAGEMENT LTD.,

27 Counter-Claimants,

28 vs.

) Case No. C 07 06045 (SC)

) IN ADMIRALTY

) ANSWER TO COMPLAINT,
) AFFIRMATIVE DEFENSES,
) COUNTERCLAIM AND THIRD
) PARTY COMPLAINT OF
) DEFENDANTS REGAL STONE,
) LTD. AND FLEET MANAGEMENT
) LTD.

EXHIBIT

B

KYL_SF462849

1	UNITED STATES OF AMERICA,	}
2		}
3	Counter-Defendant.	}
4	REGAL STONE, LTD., FLEET	}
5	MANAGEMENT, LTD.,	}
6		}
7	Cross- Claimants,	}
8		}
9	vs.	}
10	STATE OF CALIFORNIA,	}
11		}
12	Cross-Defendant.	}

Defendant and Claimant to the vessel M/V COSCO BUSAN, REGAL STONE, LTD. ("Regal Stone") and Defendant FLEET MANAGEMENT, LTD. ("Fleet") (collectively referred to as "Answering Defendants") hereby answer Plaintiff UNITED STATES OF AMERICA's ("Plaintiff") First Amended Verified Complaint in this matter, assert a counterclaim against the United States, and assert claims pursuant to Federal Rules of Civil Procedure Rule 14(c) by the United States of America against the State of California.

ANSWER TO FIRST AMENDED VERIFIED COMPLAINT

Answering Defendants respond to Plaintiff's First Amended Verified Complaint as follows:

1. Answering Defendants deny in their entirety those allegations contained in Paragraphs 8-11, 13, 14, 16, 17, 40, and 44 of Plaintiff's First Amended Verified Complaint.

2. Answering Defendants admit those allegations contained in Paragraphs 4, and 18-24 of Plaintiff's First Amended Verified Complaint.

1 3. Answering Defendants have insufficient information to respond to
2 those allegations contained in Paragraphs 28, 36, 43, and 50 of Plaintiff's First Amended
3 Verified Complaint, and therefore based upon their lack of information and belief, deny
4 the allegations contained therein in their entirety.

5 4. To the extent that the Plaintiff incorporates by reference allegations
6 contained in Paragraphs 29, 34, 41, 45, 47, and 51 of Plaintiff's First Amended Verified
7 Complaint, Answering Defendants incorporate herein its responses thereto.

8 5. In response to Paragraphs 1-3, 30-33, 37-39, 42, 46, 48, 49, 52, and
9 53, of Plaintiff's First Amended Verified Complaint, Answering Defendants state that
10 the allegations contained state issues of law which require no answer. To the extent an
11 answer is required, Answering Defendants deny the allegations.

12 6. In response to Paragraph 5 of Plaintiff's First Amended Verified
13 Complaint, Answering Defendants admit that Defendant M/V COSCO BUSAN, LR/IMO
14 Ship No. 9231743, her engines, apparel, electronics, tackle, boats, appurtenances, *etc.*, in
15 *rem.*, was flagged in Hong Kong. All other allegations contained therein are denied in
16 their entirety.

17 7. In response to Paragraph 6 of Plaintiff's First Amended Verified
18 Complaint, Answering Defendants admit Regal Stone is a foreign corporation head-
19 quartered in Hong Kong, that on November 7, 2007 Regal Stone owned the M/V COSCO
20 BUSAN, and that the M/V COSCO BUSAN was within this judicial district on
21 November 7, 2007. All other allegations contained therein are denied in their entirety.

22 8. In response to Paragraph 7 of Plaintiff's First Amended Verified
23 Complaint, Answering Defendants admit that on November 7, 2007 Regal Stone owned
24 the M/V COSCO BUSAN. All other allegations contained therein are denied in their
25 entirety.

26 9. In response to Paragraph 12 of Plaintiff's First Amended Verified
27 Complaint, Answering Defendants admit that Fleet is a foreign corporation head-
28 quartered in Hong Kong, that on November 7, 2007 Fleet was the technical manager of

1 the M/V COSCO BUSAN, and that the M/V COSCO BUSAN was within this judicial
2 district on November 7, 2007. All other allegations contained therein are denied in their
3 entirety.

4 10. In response to Paragraph 15 of Plaintiff's First Amended Verified
5 Complaint, Answering Defendants admit Fleet was the technical manager of the M/V
6 COSCO BUSAN on November 7, 2007. All other allegations contained therein are
7 denied in their entirety.

8 11. In response to Paragraph 25 of Plaintiff's First Amended Verified
9 Complaint, Answering Defendants admit that the allision with the Bay Bridge resulted
10 in the rupture of two of the M/V COSCO BUSAN's fuel tanks, thereby allowing a portion
11 of the M/V COSCO BUSAN's bunkers from one of the ruptured tanks to be discharged
12 into navigable waters of the United States and onto adjoining shorelines, including
13 navigable waters and adjoining shoreline of San Francisco Bay. In response to the
14 remaining allegations in Paragraph 25, Answering Defendants have insufficient
15 information to admit or deny the remaining allegations, and therefore based on their
16 lack of information and belief, Answering Defendants deny those allegations contained
17 therein in their entirety.

18 12. In response to Paragraph 26 of Plaintiff's First Amended Verified
19 Complaint, Answering Defendants admit the United States has expended and/or
20 sustained response costs and damages within the meaning of the Oil Pollution Act of
21 1990. Answering Defendants have insufficient information to admit or deny the
22 remaining allegations, and therefore based on their lack of information and belief, deny
23 those allegations in their entirety.

24 13. In response to Paragraph 27 of Plaintiff's First Amended Verified
25 Complaint, Answering Defendants admit that the COSCO BUSAN incident was
26 proximately caused by the acts, omissions, fault, and/or negligence of the pilot John
27 Cota. All other allegations contained therein are denied in their entirety.
28

14. In response to Paragraph 35 of Plaintiff's First Amended Verified Complaint, Defendant Regal Stone admits it is a responsible party within the meaning of the Oil Pollution Act of 1990. All other allegations contained therein are denied in their entirety.

AFFIRMATIVE DEFENSES

In further answer to Plaintiff's First Amended Verified Complaint, and as separate and distinct affirmative defenses, Answering Defendants allege the following defenses:

15. AS A FIRST, SEPARATE, DISTINCT, AFFIRMATIVE DEFENSE to Plaintiff's First Amended Verified Complaint, Answering Defendants allege that Plaintiff's First Amended Verified Complaint and each and every allegation therein, fails to state a claim upon which relief can be granted.

16. AS A SECOND, SEPARATE, DISTINCT AFFIRMATIVE DEFENSE to Plaintiff's First Amended Verified Complaint, Answering Defendants are informed and believe and thereon allege that, by exercise of reasonable efforts, Plaintiff could have mitigated the amount of damages allegedly suffered, but Plaintiff failed and/or refused and continues to fail and/or refuse, to exercise efforts to mitigate its damages, and therefore Plaintiff's recovery, if any, must be barred or diminished accordingly.

17. AS A THIRD, SEPARATE, DISTINCT, AFFIRMATIVE DEFENSE to Plaintiff's First Amended Verified Complaint, Answering Defendants allege that the alleged damages for which Plaintiff seeks to hold the Answering Defendants liable, resulted in whole or in part from the negligent, deliberate, intentional, reckless, and/or unlawful acts or omissions of third parties, and Answering Defendants are not responsible for or liable to Plaintiff for any such acts or omissions on the part of third parties.

18. AS A FOURTH, SEPARATE, DISTINCT, AFFIRMATIVE DEFENSE to Plaintiff's First Amended Verified Complaint, Answering Defendants allege that

1 Plaintiff has failed to join all indispensable parties as the State of California is an
2 indispensable party with respect to the United States' claims including claims for
3 damages to natural resources and therefore these claims should be dismissed if the state
4 is not joined as an indispensable party.

5 19. AS A FIFTH, SEPARATE, DISTINCT, AFFIRMATIVE DEFENSE to
6 Plaintiff's First Amended Verified Complaint, Answering Defendants allege that the
7 M/V COSCO BUSAN incident was caused, in whole or in part, by the negligence of the
8 United States, and its recovery must be reduced in proportion to its fault pursuant to the
9 doctrines of recoupment and/or setoff.

10 20. AS A SIXTH, SEPARATE, DISTINCT, AFFIRMATIVE DEFENSE to
11 Plaintiff's First Amended Verified Complaint, Answering Defendants allege that the
12 M/V COSCO BUSAN incident was caused, in whole or in part, by the negligence of the
13 United States, and Answering Defendants are entitled to indemnity and/or contribution
14 against any recovery that may be awarded in favor of Plaintiff.

15 21. AS A SEVENTH, SEPARATE, DISTINCT, AFFIRMATIVE
16 DEFENSE to Plaintiff's First Amended Verified Complaint, Answering Defendants
17 allege that this Court lacks subject matter jurisdiction over the United States' claims
18 brought under the Oil Pollution Act of 1990, because Plaintiff has failed to comply and
19 continues to fail to comply with the claims presentation requirement set forth in
20 33 U.S.C. § 2713(a)-(c).

21 22. AS AN EIGHTH, SEPARATE, DISTINCT, AFFIRMATIVE
22 DEFENSE to Plaintiff's First Amended Verified Complaint, Answering Defendants
23 allege this Court lacks subject matter jurisdiction with respect to the issue of whether
24 Answering Defendants have defenses to liability, or can limit their liability, under the
25 Oil Pollution Act of 1990 (33 U.S.C. §§ 2703, 2704), and whether Answering Defendants
26 can seek reimbursement of response costs and damages they have paid pursuant to
27 33 U.S.C. §§ 2708, 2713.

23. AS A NINTH, SEPARATE, DISTINCT, AFFIRMATIVE DEFENSE to Plaintiff's First Amended Verified Complaint, Answering Defendants allege the United States' forfeiture claim under the Marine Sanctuary Act must be dismissed since no vessel was involved in the taking of marine sanctuary resources.

24. AS AN TENTH, SEPARATE, DISTINCT, AFFIRMATIVE DEFENSE to Plaintiff's First Amended Verified Complaint, Answering Defendants allege the United States' injuries, if any, were caused, in whole or in part, by its gross negligence or willful misconduct, such that recovery by the United States against Defendants is barred or limited by 33 U.S.C. § 2703(b).

25. AS A ELEVENTH, SEPARATE, DISTINCT, AFFIRMATIVE DEFENSE to Plaintiff's First Amended Verified Complaint, Answering Defendants allege the United States claims are barred by the doctrines of waiver and estoppel.

26. AS A TWELFTH, SEPARATE, DISTINCT, AFFIRMATIVE DEFENSE to Plaintiff's First Amended Verified Complaint, Answering Defendants reserve the right to assert additional affirmative defenses.

COUNTER-CLAIM

Defendants and Counter-Claimants Regal Stone, Ltd. (“Regal Stone”) and Fleet Management, Ltd. (“Fleet”) (collectively “Counter-Claimants”) allege:

27. The Court has jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331, 1333, 1345, 1346, 33 USC §§ 2709 & 2717(b), and 46 U.S.C. § 30903.

28. Venue in this Court is proper pursuant to 33 U.S.C § 2717(b) and 46 U.S.C. § 30903.

29. Regal Stone, a Hong Kong based company, was, on or about November 7, 2007 and at all times relevant hereto, the owner of the vessel M/V COSCO BUSAN ("COSCO BUSAN"). The COSCO BUSAN is a vessel in excess of 300 gross tons.

30. Fleet, a Hong Kong based company, was, on or about November 7, 2007 and at all times relevant hereto, the technical manager of the COSCO BUSAN.

1 31. John J. Cota ("Pilot Cota") boarded the COSCO BUSAN as a
2 compulsory pilot on November 7, 2007 as required by California law, and navigated the
3 vessel west from the Port of Oakland towards the San Francisco-Oakland Bay Bridge.

4 32. Under Pilot Cota's compulsory pilotage, the COSCO BUSAN
5 discharged approximately 53,000 gallons of fuel oil in the San Francisco Bay (the
6 "Incident"). Regal Stone, as the owner of the vessel, was designated the Responsible
7 Party by the United States under the Oil Pollution Act of 1990 ("OPA '90") and by the
8 State of California, Office of Spill Prevention and Response.

9 33. As a result of being designated the Responsible Party, Regal Stone
10 has been required to, among other things, pay for removal costs for the November 7,
11 2007 oil spill as well as other damages, disbursements and costs relating to that incident
12 including, but not limited to: the cost to repair the COSCO BUSAN, loss of hire, port fees
13 and expenses, crew wages and expenses, loss of use, response costs and cleanup
14 expenses, consultants' and specialist fees, natural resource damages, assessment costs,
15 third party claims, claims by municipalities and government agencies and/or class action
16 lawsuits, litigation costs, attorneys fees and civil penalties. The complete costs and
17 damages are undetermined at this time, but will be ascertainable once the cleanup,
18 response, natural resource damage assessment and litigation are completed, but are
19 expected to be in excess of \$60,000,000.

20 34. The counterclaims arise from the discharge of bunker fuel from the
21 COSCO BUSAN into the waters of the San Francisco Bay on November 7, 2007 and
22 subsequent removal efforts.

23 35. The counterclaims arise from injuries to natural resources within the
24 waters of the San Francisco Bay and the Pacific Ocean resulting from the Incident and
25 damages arising there from.

26 36. The United States of America alleges that it has incurred response
27 costs, damages and other disbursements resulting from the discharge of bunkers from
28 the COSCO BUSAN. It seeks recovery of these amounts from Regal Stone and Fleet.

1 37. The United States has waived sovereign immunity with respect to
2 the claims asserted in these counterclaims, pursuant to 28 U.S.C. §§ 2674, 2675, and 46
3 U.S.C. § 30903.

4 38. At the time of the Incident, Pilot Cota held a merchant mariner's
5 license issued by the United States Coast Guard. Possession of such a license by Pilot
6 Cota was a prerequisite to qualifying to pilot vessels on the waters of San Francisco Bay.

7 39. Pilot Cota was medically unfit and incompetent to perform the duties
8 required by his United States Coast Guard license. Pilot Cota suffers from numerous
9 medical conditions including sleep apnea and depression. For several years prior to the
10 Incident and within the knowledge of the United States, Pilot Cota had been taking a
11 long list of disqualifying prescription medications including valium for sleep and Provigil
12 to keep him awake. Pilot Cota's medical condition and his use of prescription
13 medications resulted in the impairment of his cognitive abilities and contributed to his
14 lack of situational awareness.

15 40. In 2006 and 2007, Pilot Cota disclosed to the United States Coast
16 Guard his medical conditions and use of medications that rendered him unfit for duty,
17 medically disqualified and prone to periods of confusion (lack of situational awareness).

18 41. Prior to November 7, 2007, the United States knew or should have
19 known of Pilot Cota's disclosures, medical history and/or medical condition prior to the
20 incident.

21 42. The United States was negligent in licensing Pilot Cota, insofar as it
22 failed to determine that Pilot Cota was not medically fit for duty pursuant to the
23 applicable regulations. Specifically, despite Pilot Cota's medical history and medical
24 condition prior to the accident, all known to the United States Coast Guard, the United
25 States Coast Guard failed to revoke his license and instead granted him annual
26 renewals. In essence, the United States Coast Guard failed to "guard to the coast" by
27 failing to disqualify Pilot Cota and instead renewing his license.

1 43. Pilot Cota's personal history prior to the Incident includes
2 convictions for driving under the influence (DUI) offenses in 1971 and again in 1998, and
3 completion of a 30-day Alcohol and Chemical Recovery Program in March 1999.

4 44. On November 30, 1999, the United States Coast Guard's National
5 Maritime Center "Medical Waivers" staff issued a license waiver because of Pilot Cota's
6 condition and ongoing treatment. The document from the National Maritime Center
7 required that a waiver statement be physically placed on his license when it was issued.
8 On January 4, 2000, the United States Coast Guard negligently issued a license to Pilot
9 Cota and failed to note any indication of medical conditions or waiver on that license.

10 45. Following the Incident, and even before completing a comprehensive
11 investigation of the Incident, the United States Coast Guard suspended Pilot Cota's
12 license based solely on the medical disclosures made by him in January 2007, some ten
13 months prior to the incident. Had the United States Coast Guard properly evaluated
14 Pilot Cota's written disclosures about his medical conditions and use of certain
15 prescription medicines, he would never have been allowed to pilot COSCO BUSAN on
16 the day of the Incident.

17 46. The United States Coast Guard negligently allowed Pilot Cota to
18 maintain and renew his Coast Guard license, and failed to annotate the waiver on Pilot
19 Cota's license. The United States negligence included, but is not limited to, its failure to
20 revoke Pilot Cota's license and its decision to renew his license.

21 47. If the United States Coast Guard had properly reviewed Pilot Cota's
22 license application and disclosures in accordance with its own procedures and prior
23 recommendations of the National Transportation Safety Board following the STAR
24 PRINCESS grounding and the tragic Staten Island Ferry incident, it would not have
25 renewed Pilot Cota's licenses in 2006 and again in 2007 and the November 7, 2007
26 Incident would not have occurred.

27 48. As the COSCO BUSAN was approaching the Bay Bridge, the United
28 States Coast Guard Vessel Traffic Service ("VTS") for the San Francisco Bay knew that

1 the vessel was off track and standing into danger. VTS owed and/or assumed a duty to
2 timely monitor vessel traffic within the VTS system, and to competently intervene by
3 issuing advisements, warnings and/or directions in the event a vessel in the VTS system
4 is off course, in peril and/or otherwise standing into danger.

5 49. VTS breached its duties: by failing to properly monitor the vessel's
6 movement, by failing to make timely contact with Pilot Cota, by providing Pilot Cota
7 with inaccurate information, by failing to warn Pilot Cota of the impending danger, and
8 by failing to direct, order and/or use its authority to command that the pilot change his
9 intended track, steer away from the danger, change course, reverse engines, or otherwise
10 maneuver so as to avoid the bridge tower.

11 50. Moreover, instead of taking action to properly and timely monitor,
12 advise, warn and/or direct the Pilot Cota away from the peril so that the vessel would
13 not allide with the bridge, VTS operators placed bets and/or wagers among themselves
14 as to whether the vessel would pass safely or strike the bridge.

15 51. VTS further breached the duties it owed and/or assumed to Regal
16 Stone, Fleet, the public, and the environment by abandoning its role and mission to
17 properly monitor, advise, warn and direct vessel traffic.

18 FIRST COUNTER-CLAIM

19 52. Counter-Claimants reallege and incorporate by reference the
20 allegations contained in paragraphs 27 through 51 of their counterclaims.

21 53. The discharge of bunker fuel from the COSCO BUSAN into the
22 navigable waters of San Francisco Bay, the Pacific Ocean and adjoining shorelines
23 resulted from the negligence of the United States.

24 54. The discharge of bunker fuel from the COSCO BUSAN into the
25 navigable waters of San Francisco Bay, the Pacific Ocean and adjoining shorelines
26 resulted from the gross negligence and/or willful misconduct of the United States.

27 55. As a consequence of the United States' negligence, gross negligence,
28 or willful misconduct, Counter-Claimants have sustained costs, damages, and losses and

1 continue to sustain costs, damages and losses. They are entitled to the remedy of setoff
2 or recoupment, up to the full value of the United States' claims asserted against them.

3 **SECOND COUNTER-CLAIM**

4 56. Counter-Claimants re-allege and incorporate by reference the
5 allegations contained in paragraphs 27 through 55 of their counterclaims.

6 57. The negligence, gross negligence, or willful misconduct of the United
7 States resulted in the discharge of bunker fuel onto navigable waters and adjoining
8 shorelines, and caused injury to natural resources. It also resulted in damage to the
9 vessel and the San Francisco-Oakland Bay Bridge, damages to third parties, damages to
10 natural resources, and caused Fleet and Regal to incur fines, penalties and other losses.

11 58. Counter-Claimants have incurred, and will continue to incur costs,
12 damages, losses and penalties caused directly and proximately by the United States'
13 tortious acts and omissions.

14 59. The United States is liable to Counter-Claimants for all such costs,
15 damages, losses and penalties.

16 **THIRD COUNTER-CLAIM**

17 60. Counter-Claimants reallege and incorporate by reference the
18 allegations contained in paragraphs 27 through 59 of their counterclaims.

19 61. The negligence, gross negligence, or willful misconduct of the United
20 States resulted in the discharge of bunker fuel onto navigable waters, damages to third
21 parties, and injuries to natural resources.

22 62. Counter-Claimants have incurred, and will continue to incur,
23 response costs, damages and other losses as a result of the discharge of bunker fuel onto
24 navigable waters, and the resulting injury to the natural resources within those waters.

25 63. The United States is liable in contribution to Counter-Claimants for
26 an amount in proportion to its culpability in causing the incident which represents the
27 response costs, damages, disbursements and other losses that Counter-Claimants have
28

1 incurred and/or will incur as a result of the discharge of bunkers into and onto the
2 navigable waters of the United States.

3 **FOURTH COUNTER-CLAIM**

4 64. Counter-Claimants re allege and incorporate by reference the
5 allegations contained in paragraphs 27 through 63 of their counterclaims.

6 65. The negligence, gross negligence, or willful misconduct of the United
7 States resulted in the discharge of bunker fuel onto navigable waters, and caused injury
8 to the natural resources within those waters.

9 66. Counter-Claimants have incurred, and will continue to incur,
10 response costs and damages as a result of the discharge of bunker fuel onto navigable
11 waters, and the resulting injury to the natural resources within those waters.

12 67. The United States is liable to Counter-Claimants for the response
13 costs and damages they have incurred, or will incur, as a result of the discharge of
14 bunkers into and onto the navigable waters of the United States.

15
16 **RULE 14(C) CLAIM BY UNITED STATES**

17 **AGAINST STATE OF CALIFORNIA**

18 Pursuant to Federal Rule of Civil Procedure 14(c), Regal Stone, Ltd. ("Regal
19 Stone") and Fleet Management, Ltd. ("Fleet") (collectively "Cross-Claimants") and
20 Claimant demand judgment against the State of California (the "State") in favor of the
21 United States of America, as if the United States had commenced an action directly
22 against the State of California.

23 68. Cross-Claimants incorporate and re-allege the allegations contained
24 in paragraphs 27 to 67 of their Counterclaims against the United States by reference.

25 69. The United States is the Plaintiff in this action. It filed its First
26 Amended Verified Complaint on March 26, 2008.

1 70. The United States' First Amended Verified Complaint alleges that
2 this is a case of admiralty and maritime jurisdiction within Rule 9(h) of the Federal
3 Rules of Civil Procedure.

4 71. The United States alleges it is authorized to bring suit, and that the
5 Court has jurisdiction over its claims.

6 72. In this action, the United States seeks response costs and damages
7 from Cross-Claimants resulting from an oil spill from the COSCO BUSAN.

8 73. The United States alleges that the COSCO BUSAN, while piloted by
9 Defendant John Cota, struck the San Francisco-Oakland Bay Bridge on November 7,
10 2007.

11 74. The United States alleges that as a result of this allision, oil spilled
12 from the COSCO BUSAN, and the United States has incurred response costs and
13 damages as a result of the oil spill.

14 75. In its First Amended Verified Complaint, the United States blames
15 Defendant John Cota, as well as Cross-Claimants for the allision.

16 76. The true facts and circumstances regarding the allision are that it
17 was caused by the State's negligent decision to issue a pilots license to Defendant John
18 Cota, who was not medically fit or competent to pilot a vessel such as the COSCO
19 BUSAN at the time of the allision. The State of California issued Pilot Cota's state
20 license to pilot vessels such as the COSCO BUSAN, and renewed that license.

21 77. The State employed physicians to examine Pilot Cota in order to
22 determine whether he was medically fit to perform his duties as a marine pilot. These
23 physicians acted as agents of the State.

24 78. The State's decision to renew Pilot Cota's license was negligent, or
25 grossly negligent, given Pilot Cota's medical condition, history of prior accidents, and his
26 history of addiction to alcohol and/or substances. The State's negligence, and/or the
27 negligence of agents of the State for whom the State is vicariously liable, proximately
28

1 caused the allision, and it is therefore directly liable to the United States for its
2 damages.

3 79. The physicians who examined Pilot Cota acted with negligence, gross
4 negligence, or willfully, in that they certified he was fit to perform his duties as a pilot
5 when they knew, or reasonable should have known, that Pilot Cota was not medically fit
6 to do so.

7 80. The State is liable to the United States for negligently renewing Pilot
8 Cota's license.

9 81. The State is liable to the United States for the negligence of its
10 physicians in certifying that Pilot Cota was fit to perform his duties.

11 82. The State is liable to the United States for the gross negligence,
12 willful misconduct, and willful actions of its employees and agents in connection with the
13 renewal of Pilot Cota's license.

14 83. The State is liable to the United States for the negligent and
15 intentional misrepresentations made by State employees and agents in connection with
16 the renewal of Pilot Cota's license.

17 **FIRST CROSS-CLAIM**

18 84. Cross-Claimants incorporate and re-allege the allegations contained
19 in paragraphs 27 to 83 by reference.

20 85. Cross-Claimants have incurred, and will continue to incur costs,
21 damages, losses and penalties caused directly and proximately by the State's acts and
22 omissions.

23 86. The Incident was proximately caused by the State's failure to use due
24 care in its licensing, supervision and training of Pilot Cota.

25 87. Cross-Claimants are entitled to indemnification from the State for
26 any costs, damages, losses and penalties it paid or will pay as a result of the Incident.
27
28

SECOND CROSS-CLAIM

88. Cross-Claimants incorporate and re-allege the allegations contained in paragraphs 27 to 87 by reference.

89. Cross-Claimants have incurred, and will continue to incur costs, damages, losses and penalties caused directly and proximately by the State's acts and omissions.

90. The Incident was proximately caused by the State's failure to use due care in its licensing, supervision and training of Pilot Cota.

91. Cross-Claimants are entitled to contribution from the State for any costs, damages, losses and penalties it paid or will pay as a result of the Incident.

THIRD CROSS-CLAIM

92. Cross-Claimants incorporate and re-allege the allegations contained in paragraphs 27 to 91 by reference.

93. The State has a duty to ensure that any San Francisco Bar Pilot appointed to navigate a vessel is properly licensed, trained, and supervised.

94. The State breached its duty to ensure that Pilot Cota was properly licensed, trained, and supervised.

95. The State's breach of this duty proximately caused the Incident.

96. The State was negligent under California Government Code §§ 815.2 and 815.4.

97. Cross-Claimants have incurred, and will continue to incur costs, damages, losses and penalties caused directly and proximately by the State's negligence.

FOURTH CROSS-CLAIM

98. Cross-Claimants incorporate and re-allege the allegations contained in paragraphs 27 to 97 by reference.

101. Cross-Claimants have incurred, and will continue to incur costs, damages, losses and penalties caused directly and proximately by the State's failure to properly discharge its mandatory duties.

102. Cross-Claimants incorporate and re-allege the allegations contained in paragraphs 27 to 101 by reference.

103. The Board of Pilot Commissioners is required by California Harbors and Navigation Code §§ 1154 *et. seq* to properly train, license, and supervise San Francisco Bar Pilots to ensure the safety of public.

104. This requirement creates a public trust in the State of California to exercise its duties with due care and to avoid violating any duty or guaranty the State of California has made to the public.

105. The Board of Pilot Commissioners, by negligently training, supervising, and licensing Pilot Cota, failed in its obligation to exercise its duties with due care and breached its duty of guaranty and duty of warranty and as a result caused harm to the public's trust.

106. Cross-Claimants have incurred, and will continue to incur costs, damages, losses and penalties caused directly and proximately by the State's breach of trust.

SIXTH CROSS-CLAIM

107. Cross-Claimants incorporate and re-allege the allegations contained in paragraphs 27 to 106 by reference.

108. The State of California knowingly and unreasonably created a dangerous condition under California Government Code § 835 by its acts and omissions related to the improper licensing, training, and supervision of Pilot Cota.

109. The San Francisco Bay is a public property.

110. Pilot Cota was medically unfit to navigate the COSCO BUSAN and the State of California created an unsafe condition in the San Francisco Bay when it directed Pilot Cota to navigate Regal Stone's vessel.

111. Pilot Cota's history of prior pilot incidents rendered him unfit for pilotage and the State of California created an unsafe condition in the San Francisco Bay when it directed Pilot Cota to navigate Regal Stone's vessel.

112. Cross-Claimants have incurred, and will continue to incur costs, damages, losses and penalties caused directly and proximately by the State's creation of a dangerous condition.

WHEREFORE, Regal and Fleet pray for the following relief:

1. The United States' claims be dismissed against them with prejudice;
2. The *in rem* claims against the M/V COSCO BUSAN be dismissed with prejudice;
3. That the Court enter judgment in their favor on the United States' claims against them;
4. With respect to Rule 14(c) third-party complaint, judgment be entered in favor of the United States on its claims and against the State of California;
5. That the Court rule in their favor on their counter-claims against the United States;

1 6. That the Court rule in their favor on their cross-claims against the
2 State of California;

3 7. For an award of costs and attorney's fees incurred by them in this
4 matter; and

5 8. For all other relief to which they may be entitled at law or in equity.
6
7
8

9 DATED: June 4, 2008

/s/ John Giffin

JOHN D. GIFFIN

JOSEPH A. WALSH II

JOHN COX

NICOLE S. BUSSI

Attorneys for REGAL STONE, LTD. and
FLEET MANAGEMENT, LTD.

PROOF OF SERVICE

I, the undersigned, hereby declare that I am employed in the City and County of San Francisco. I am over the age of eighteen years and not a party to the within action. My employer and business address is Keesal, Young & Logan, 450 Pacific Avenue, San Francisco, CA 94133, and my telephone number is (415) 398-6000.

On AUGUST 21, 2008, Following Ordinary Business Practices, I Served **AMENDED THIRD PARTY COMPLAINT AGAINST STATE OF CALIFORNIA AND CHARLES CALZA, M.D., BY UNITED STATES OF AMERICA [FRCP 14(c)]** on the parties involved addressed as follows:

Ronald J. Tenpas
United States Department of Justice
Environment and Natural Resources Division
Washington, DC 20530

[X] BY U.S. MAIL: I am readily familiar with my employer's practice for collection and processing of documents for mailing with the United States Postal Service and that practice is that the documents are deposited with the United States Postal Service with postage fully prepaid the same day as the collection in the ordinary course of business. On this date, I served the above interested parties following my employer's ordinary business practice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 21, 2008, at San Francisco, California.

/s/ Megan Albertson
Megan Albertson